

Amended

Seq7B	5'-GAT-AAA-ACC-TCC-AAT-TCC-3'	SEQ ID 21
Seq4A	5'-GTA-CAG-AAA-TGG-AAA-AGG-3'	SEQ ID 22
Seq6A	5'-GGA-TGA-TTT-GTA-TGT-AGG-3'	SEQ ID 23
Seq5B	5'-GGA-TGT-GGT-ATT-CCT-AAT-TG-3'	SEQ ID 24

REMARKS

Claims 1-20 are pending in this application. The specification has been amended to correct a typographical error. Support for the amendments can be found in the specification as filed and will be discussed further below. No new matter has been added.

According to M.P.E.P. §2163.07, an amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of the errors in the specification, but would also recognize the appropriate correction. In re Oda, 443 F.2d 1200, 170 U.S.P.Q. 260 (CCPA 1971). As the amendments submitted herein are to correct an obvious error that, as required by In re Oda, would be recognized and corrected by the skilled artisan, these amendments clearly do not constitute new matter.

A typographical error was made when entering the nucleic acid sequence for SEQ ID NO: 1 (which is the primer referred to as OUT3). The last nucleic acid was entered as "C" instead of "G". Thus, the last codon of SEQ ID NO: 1 should read "ATG" not "ATC". The error would be quickly recognized when one skilled in the art attempted to practice the invention. In practicing the invention the skilled artisan would go to page 13, Example A, of the specification for specific examples of modes for carrying out the invention, which states "Two subsequent nested PCR were set up using specific outer

primers (PRTO-5 and OUT3) and inner primers (PCR2.5 and PCR2.3), respectively (see Table 1). The outer primer reaction was done as described in WO97/27480." Upon looking at WO97/27480 for more specifics regarding the outer primer reaction, the skilled artisan would find that OUT3, which is also SEQ ID NO:1 of WO97/27480, is actually a primer whose last codon reads ATG not ATC as described on page 10 of WO97/27480 and the WO97/27480 Sequence Listing for SEQ ID NO: 1 on pages 35-36.

Thus, the skilled artisan would not only recognized the error in SEQ ID NO: 1, but also recognized the appropriate correction based on the detailed description of the outer primer reaction in WO97/27480. Therefore, applying the doctrine espoused in In re Oda and M.P.E.P. §2163.07, the obvious error corrected by the amendment filed herewith does not constitute new matter and the Applicants respectfully request the entry of the amendment to the specification.

The applicants will file a substitute sequence listing in paper and computer readable form and a statement to support filing and submission for the instant application upon indication by the Examiner that the amendment has been entered.

In the Office Action, the Office required restriction under 35 U.S.C. § 121 to one of the following groups of claims:

- I. Group I, claims 1-9, drawn to a method for detecting *pol* gene mutations in HIV-1 wherein the sample is a RNA isolate;
- II. Group II, claims 10-18, drawn to a method for detecting *pol* gene mutations in HIV-1 wherein the sample is a DNA isolate;and
- III. Group III, claims 19 and 20, drawn to primer sequences and a kit for detecting the mutations.

The restriction requirement is respectfully traversed. However, to be fully responsive to the restriction requirement, Applicants provisionally elect to prosecute Group I, Claims 1-9.

The Applicants refer the Office to M.P.E.P. § 803, which sets forth the criteria and guidelines for the Office to follow in making proper requirements for restriction. The M.P.E.P. instructs the Office as follows:

If the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to distinct or independent inventions.

M.P.E.P. § 803 (emphasis added).

The Office has not shown that examining Groups I - III would constitute a serious burden. For example, as the Office states, there is overlap between the methods of Group I and II. Therefore, a search of Groups I and II should not constitute a serious burden and at the very least the Office should examine Groups I and II in response to the Applicants election, with traverse, of the subject matter of Group I. Again, the critical issue is not whether these groups are unrelated but whether there is a serious burden to the Office in examining the Groups together. In view of the foregoing remarks, Applicants respectfully request that the requirement be withdrawn.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 12, 2002

By: _____

A handwritten signature in cursive script, appearing to read "Anthony C. Tridico", written over a horizontal line.

Anthony C. Tridico
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